

CONSENSUS ITEM

Draft – For Discussion Only

ITEM NO.: 2

Version Date: July 30, 2001 Revision

ITEM TITLE: Program Eligibility Determination by the County Welfare Departments

Premise

The County Welfare Department is not:

- A Health Plan
- A Covered Entity
- A Healthcare Component of a Hybrid Entity
- A Business Associate of a Health Care Component or a Covered Entity

Therefore, County Welfare Departments are not mandated to comply with HIPAA Privacy Rules or the transaction standards including:

- Eligibility for a Health Plan (ASC X12N 270/271)
- Enrollment and Disenrollment in a Health Plan (ASC X12N 834)
- Retail Pharmacy NCPDP Standards

Reasoning

Several sections of the HIPAA rules support this premise.

From the Preamble to the Privacy Rules:

Part 160 – Subpart A – General Provisions

“Part 160 applies to all administrative simplifications regulations. We include the entire regulation text in this rule, not just those provisions relevant to this Policy regulation. For example, the term “trading partner “ is defined here, for use in Health Insurance Reform: Standards for Electronic Transactions regulation, published at 65 FR 50312, August 17, 2000 (the “Transaction Rule”). It does not appear in the remainder of this Privacy Rule.”

“Sections 160.101 and 160.104 of Subpart A of art 160 were promulgated in the Transaction Rule, and we so not change them here. We do, however, make changes and additions to Section 160.103, the definitions section of Subpart A. The definitions that are promulgated in the Transaction Rule and that remain unchanged here are: Act, ANSI, covered entity, compliance date, group health

plan, HCFA, HHS, health care provider, health information, health insurance issuer, health maintenance organization, modify or modification, Secretary, small health plan, standard setting organization, and trading partner agreement. Of these terms, we discuss further in this preamble only covered entity and health care provider.”

Section 160.103 (2)(ii)(A) regulation text, lists those organizations that are excluded from the definition of health plans:

(ii) “A government-funded program (other than one listed in paragraph (1)(i)-(xvi) of this definition:

(A) Whose principal purpose is other than providing or paying for the cost of healthcare; or....”

A local welfare agency fits this definition. HIPAA Rule, section 160.103, preamble, and page 82479 of the Federal Register – Vol. 65, No. 250, further clarifies and supports this interpretation.

“We therefore clarify that while many government programs (other than the programs specified in the statute) provide or pay the cost of medical care, we do not consider them to be individual or group plans and therefore, do not consider them to be health plans. Government funded programs that do not have as their principal purpose the provision of, or payment for, the cost of health care but which do incidentally provide such services are not health plans (for example, programs such as the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and the Food Stamp Program, which provide or pay for nutritional services, are not considered to be health plans).....”

“We note that in certain instances eligibility for or enrollment in a health plan that is a government program providing public benefits, such as Medicaid or SCHIP, is determined by an agency other than the agency that administers the program, or individually identifiable health information used to determine enrollment or eligibility in such a health plan is collected by an agency other than the agency that administers the health plan. In these cases, we do not consider an agency that is not otherwise a covered entity, such as a local welfare agency, to be a covered entity because it determines eligibility or enrollment or collects enrollment information as authorized by law. We also do not consider the agency to be a business associate when conducting these functions, as we describe further in the business associate discussion above.”

If the local welfare agency is not a health plan (or health care provider or clearing-house), it is not performing covered functions and is not part of the county government health care component (Rule sections 164.501(a), 164.504(a) of regulation text).

HIPAA Rule, section 160.1201(a) defines the Eligibility for Health Plan transaction as: “An inquiry from a health care provider to a health plan, or from one health plan to another health plan....”

Standards for Electronic Transactions – Preamble page 12, presents an example of a non-covered entity (Employer or Union) performing enrollment and disenrollment in a health plan. The HIPAA standard enrollment transaction is optional for the non-covered entity. This scenario applies to a local welfare agency; e.g., enrolling General Assistance recipients in a County Medically Indigent Services Program.

However, if the eligibility and enrollment functions covered by the above transaction standards are conducted within a healthcare component of the county hybrid entity, then HIPAA rules do apply.

This item builds on the reasoning presented in Consensus Item 1, which concludes that counties are hybrid entities making County Welfare Department eligibility functions one of the county functions not covered by HIPAA rules.

Implications

The statement in the Preamble to the Privacy Rules indicating that section 160 is an update to and replacement of the same section in the Transaction and Code Set Rules provides the basis for this Consensus Item. It means that changes and additions to section 160 apply to both the Privacy Rules and the Transaction and Code Set Rules. The health plan exclusions in section 160.103 are new in the Privacy Rules, but they also apply to the Transaction Rules.

County Welfare Departments are not directly required to comply with HIPAA Privacy Rules, security standards, transaction sets. This applies to all programs for which the Welfare Departments determine eligibility such as CalWORKs, Refugee Assistance, Medi-Cal, Food Stamp, General Assistance/General Relief, County Medical Services Program (CMSP), and medically indigent health care programs. The automated systems that support eligibility determination will not be required to comply with HIPAA Transaction Standards. This pertains to the legacy systems, as well as the Statewide Automated Welfare Systems (SAWS), which support eligibility determination for CalWORKs, Food Stamps, Medi-Cal, General Assistance/General Relief, Refugee Assistance, and County Health Indigent Programs (CHIP).

This reasoning applies regardless of where staff are located who perform the eligibility determination function. Staff may be centralized in the Welfare Department, out-stationed in health facilities and other community locations, or a combination. The key issue is what organizational department they work, not where they are located.

This reasoning presented in this Consensus item also applies to the security standards as they are now drafted. Unless those rules are finalized to specifically include these eligibility determination functions, County Welfare Departments will not be subject to the security standards. The County Issues Workgroup will re-evaluate this issue once those rules are finalized.

Even though the HIPAA Privacy Rules do not apply directly to the County Welfare eligibility determination functions, current state and federal privacy rules are still applicable.

This premise does not speak to the impact of changes made in HIPAA covered entities (both inside and outside of county government). Changes made in these coverage entities may have implications for County Welfare Departments. One change is certain. That is the application of new ethnic and racial categories required by HIPAA. These changes may also impact the way health-related data are received, stored, and used within Welfare Departments. Another impact may be the wording and administration of client releases of information. These later issues will be the subject of a future Consensus Item.

This Consensus Item also does not address the impact of HIPAA on other programs administered by Welfare Departments such as Child Welfare Services, Adult Protective Services, and In-Home Supportive Services (to name a few). Many of these programs utilize Title XIX health-related funding to support the services. Many also include health-related data in automated and/or manual case files. These issues will be the subject of a future Consensus Item.

Item Chronology

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Supplemental Materials

Links to supporting legal and content expert opinions.